IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 293 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSUKHBHAI AVRARBHAI DETROJA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 293 of 2002

MR NIRAV C THAKKAR for Petitioner No. 1

MR SS PATEL APP for Respondent No. 1

MR JM BUDDHBHATTI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 01/09/2003

ORAL JUDGEMENT

Rule. Mr.J M Budhbhatti learned advocate appears and waives service of notice of Rule on behalf of

respondent no.2. Mr.S S Patel learned APP appears and waives service of notice of Rule on behalf of State.

2. The second respondent was prosecuted in Criminal Case No.2573/1998 before the learned J.M.F.C at Jamnagar for offences punishable u/s.324, 504 and 506(2) of IPC. On conclusion of evidence, the learned Magistrate pronounced judgment on 24/04/02, acquitting the second respondent from the aforesaid offences, by extending the benefit of doubt to him.

3. Feeling aggrieved by the said judgment and acquittal order of the trial court, the petitioner, original informant, has preferred this revision application before this Court. It has been contended here that the petitioner was not summoned to tender evidence before the trial court and even, the Medical Officer was not examined; that, in absence of the evidence of the petitioner and of the Medical Officer, the trial court has extended the benefit of doubt to the second respondent, stating that other witnesses have not supported the case of the prosecution. The petitioner contends that because of the non-examination of the petitioner and the Medical Officer, a serious prejudice has been caused to the prosecution and it has resulted in miscarriage of justice. It is also contended by the learned advocate for the petitioner that the petitioner was transferred to Kutchchh District and therefore, he was naturally not available at Jamnagar, when the summons may have been tendered at his Jamnagar address; that, no effort was made either by the Court or by the prosecuting agency to find out the whereabouts of the petitioner; that, therefore, there is a serious injustice extended to the petitioner and to the prosecution and therefore, the judgment and acquittal order are illegal and erroneous and deserve to be set aside.

4. On hearing, it is found that the judgment and acquittal order recorded by the trial court as aforesaid has been placed at page 1 to the petition. On going through the said judgment and acquittal order, it is found that some witnesses examined by the prosecution have turned hostile and they have not supported the case of the prosecution.

5. It is found from the judgment of the trial court that the Court had issued summons to the petitioner. But, he was not found at the address given on record. The petitioner has contended that he has been subsequently transferred to Kutchchh District and therefore, he was not working at Jamnagar and

consequently, he was not available at the time, when the summons may have been sent to his Jamnagar address. This factual aspect has not been seriously disputed by the respondents. It would, therefore, be clear that the petitioner at the relevant point of time, when the trial commenced before the trial court, was not present and available at Jamnagar, as he was already transferred to Kutchchh District. If the petitioner was transferred to Kutchchh District, he would not be available at Jamnagar and therefore, it was the duty of the prosecuting agency, as well as of the Court to inquire from the Head of the office of the petitioner, to ascertain as to the whereabouts of the petitioner. It seems that the petitioner was in government service as Physical Trainer and therefore, the Head of the office of the petitioner at Jamnagar could very well tell the Court as to where the petitioner was transferred. Therefore, it was possible for the Court as well as for the prosecuting agency to know the whereabouts of the petitioner. It is more so when the petitioner was the main witness. He was not only the informant, but, was the injured person. It is more so when the other witnesses have turned hostile and they have not supported the case of the prosecution. In that view of the matter, the evidence of the petitioner was an important peace of evidence which was required to be placed on record for appropriate appreciation by the Court concerned. It is, therefore, found that non examination of the petitioner on the aforesaid ground of non-availabiliity has caused serious injustice to the prosecution. It can be said that the Court as well as the prosecuting agency, both have failed in securing the presence of the petitioner, by making a short inquiry from the Head of the office of the petitioner about his whereabouts. This has not been done and therefore, the petitioner could not be examined for no fault on his part. In that view of the matter, it is ex-facie clear that the trial court has not given a reasonable opportunity to the prosecuting agency for bringing the petitioner to the Court for his examination as the main witness. It is also found that the Medical Officer has not been examined and no reason has been assigned for the non-examination of the Medical Officer. The case of the prosecution is that the present petitioner was hit by his own name plate by the second respondent and injury was caused on the forehead of the petitioner. This fact could be supported by the medical evidence and therefore, the examination of the Medical Officer was a must. The non-examination of the Medical Officer has not been explained. In that view of the matter, non-examination of the Medical Officer has also resulted in serious prejudice to the cause of justice.

6. In above view of the matter, the judgment and acquittal order of the trial court, without the examination of the aforesaid witnesses, cannot be treated to be legal and valid and consequently, when the judgment and acquittal order are not found to be legal and valid, this Court has to remand the matter back to the trial court, for taking further evidence and deciding the matter in accordance to law, after providing a reasonable opportunity to the petitioner to produce evidence before the trial court.

7. For the foregoing reasons, this revision application is allowed. The judgment and acquittal order recorded by the trial court on 24/04/02 in Criminal Case No.2573/1998 is ordered to be quashed and set aside. Rule is made absolute.

7.1 The matter is remanded back to the trial court. The trial court is directed to provide a reasonable opportunity to the State to produce evidence and the trial court will undertake further trial, on such remand, after providing such an opportunity to the State. For completing the record, it may be stated that the petitioner, original informant, has stated his address in the memo of revision application, which will be taken into consideration by the trial court for issuance of summons to the petitioner - original informant. The learned advocate for the second respondent states that the respondent was on bail on surety. Naturally, he will remain on bail, pending hearing and disposal of the above said criminal case before the trial court. The office to send the records & proceedings back to the trial court immediately.

(D. P. Buch, J.)

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